

REMARKS

The present invention was filed with 24 claims. Claims 19-23 are withdrawn from consideration as being drawn to a non-elected invention. By virtue of this amendment, claims 1-7, 11-12, 14-16 and 24 have been amended and new claims 25-31 have been added. Claims 3 and 5-7 have been rewritten in independent form. Support for the amendment to claim 1 can be found at least at page 21, lines 14-16. Support for the amendment to claim 2, and new claims 25-28 can be found at least at page 19, lines 14-20; support for the amendment to claim 5 can be found at least at page 25, lines 11-12; support for new claim 29 can be found at least at page 24, lines 6-7. Support for new claim 31 can be found at least at page 12, lines 13-16. Claims 4, 11-12, 14-16 and 24 have been amended for clarity and/or dependency. Thus, claims 1-18 and 24-31 are under consideration.

Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. Applicants reserve the right to file the subject matter of amended or cancelled claims in related applications.

The Examiner indicates at page 6 of the Office Action that claims 3, 5-7, and 10 would be allowable if re-written in independent form including all of the limitations of the base claim and intervening claims.

Claim Rejections Under 35 U.S.C. §112

Claims 11, 14-15 and 24 are rejected under 35 U.S.C. 112, second paragraph as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants traverse this rejection of claims. In an effort to expedite prosecution and without acquiescing as to the correctness of this rejection, claim 11 has been amended to delete the term “derived” and claims 14-15 and 24 have been amended for clarity pursuant to the Examiner’s suggestions.

Applicants respectfully request withdrawal of this rejection of claims.

Claim Rejections Under 35 U.S.C. § 102

I. Claims 1-2, 4, 8-9, 12, 15-18 and 24 are rejected under 35 U.S.C. 102(e) as allegedly anticipated by Wilson et al. US 6,274,354B1.

Applicants traverse this rejection of claims. Wilson et al. US 6,274,354B1 do not teach each and every element of the claimed invention, and therefore cannot anticipate the claimed invention. In an effort to expedite prosecution and without acquiescing as to the correctness of this rejection, claim 1 has been amended to recite an adenovirus vector for the manufacture of rAAV, wherein the adenovirus vector comprises an AAV *rep* gene, and wherein the AAV p5 promoter is effectively deleted upstream of the AAV *rep* gene and no promoter has been inserted in its place. Claim 3 has been deemed allowable by the Examiner if rewritten in independent form and claims 2, 4 and 12 recite dependency upon claim 3. Claims 8-9 are ultimately dependent upon claim 3 and claims 16-18 and 24 are ultimately dependent upon claim 12.

Applicants respectfully request withdrawal of this Section 102(e) rejection of claims.

II. Claims 1, 4, 8-9, 12, 15-18 and 24 are rejected under 35 U.S.C. 102(e) as allegedly anticipated by Perricaudet et al., US 6,420,170B1.

Applicants traverse this rejection of claims. Perricaudet et al., US 6,420,170B1 do not teach each and every element of the claimed invention, and therefore cannot anticipate the claimed invention. In an effort to expedite prosecution and without acquiescing as to the correctness of this rejection, claim 1 has been amended to recite an adenovirus vector for the manufacture of rAAV, wherein the adenovirus vector comprises an AAV *rep* gene, and wherein the AAV p5 promoter is effectively deleted upstream of the AAV *rep* gene and no promoter has been inserted in its place. Claim 3 has been deemed allowable by the Examiner if rewritten in independent form and claims 2, 4 and 12 recite dependency upon claim 3. Claims 8-9 are ultimately dependent upon claim 3 and claims 16-18 and 24 are ultimately dependent upon claim 12.

Applicants respectfully request withdrawal of this Section 102(e) rejection of claims.

III. Claims 1, 4, 8-9, 12-18 and 24 are rejected under 35 U.S.C. 102(e) as allegedly anticipated by Dong et al., WO 95/06743.

Applicants traverse this rejection of claims. Applicants believe the Examiner intended to reject the claims under 35 U.S.C. 102(b) in view of Dong et al., WO 95/06743. Dong et al., WO 95/06743 do not teach each and every element of the claimed invention, and therefore cannot anticipate the claimed invention. In contrast to the present invention, Dong et al., WO 95/06743 at page 9, lines 9-10 state that the use of AAV promoters, such as the AAV p5 promoter, will generally be preferred in most cases. In an effort to expedite prosecution and without acquiescing as to the correctness of this rejection, claim 1 has been amended to recite an adenovirus vector for the manufacture of rAAV, wherein the adenovirus vector comprises an AAV *rep* gene, and wherein the AAV p5 promoter is effectively deleted upstream of the AAV *rep* gene and no promoter has been inserted in its place. Claim 3 has been deemed allowable by the Examiner if rewritten in independent form and claims 2, 4 and 12 recite dependency upon claim 3. Claims 8-9 are ultimately dependent upon claim 3 and claims 16-18 and 24 are ultimately dependent upon claim 12. Applicants respectfully request withdrawal of this Section 102 rejection of claims.

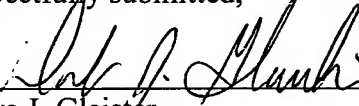
CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 226272007801. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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